IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A.No.3094 of 2006
Date of Decision : 23.08.2007

Mehar Singh .....Appellant

versus

Mohinder Pal .....Respondent

CORAM : HON'BLE MR.JUSTICE HEMANT GUPTA

Present: Ms.Jaspal Kaur Gurna, Advocate for the appellant.

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JUDGMENT

HEMANT GUPTA, J. (Oral)

The defendant is in second appeal aggrieved against the judgment and decree passed by the Courts below whereby in a suit for specific performance of the agreement of sale dated 16.3.2000, the Court has passed a decree for returning the earnest money of Rs.66,000/- alongwith interest @ 12% per annum from 21.5.2001 till the date of decree and @6% per annum on the entire decretal amount till the actual realization of the whole amount.

The plaintiff has sought a suit for specific performance of the agreement of sale dated 16.3.2000 alleging therein that 16 kanals of the land was agreed to be sold by the defendant and that the plaintiff paid Rs.66000/- as earnest money to the defendant. The sale deed was to be executed on or before 20.3.2001 on receipt of balance sale consideration, the total of which is Rs.2 lacs. It has been alleged that since the defendant has failed to execute the sale deed, the present suit for specific performance was filed by the plaintiff on 12.6.2001.

The defendant, in the written statement, denied the execution of the agreement to sell his land measuring 16 kanals for a total sale

consideration of Rs.2 lacs. It was alleged that the agreement relied upon by the plaintiff is false, fictitious document and the same is result of misrepresentation and undue influence. It was further stated that the defendant was selling his crop through the agency of the Commission Agent being run by the plaintiff. It was during the course of transactions, the plaintiff might have obtained his signatures on some blank papers which he might have utilized and manufactured into the alleged agreement to sell.

On the basis of the pleadings of the parties, an issued was framed by the learned trial Court to the effect, "whether the agreement in dispute was out of undue influence? Onus to prove such issue was on the defendant. The learned trial Court held that the defendant has admitted his signatures on the agreement, Exhibit P-1, dated 16.3.2000. Jodh Raj has been examined as attesting witness to prove the execution of the aforesaid agreement. The Court also found that the stand of the plaintiff is not bonafide as another prior agreement dated 17.3.1999, Exhibit D-A, has been produced whereby the plaintiff has agreed to purchase the land of the defendant. One of the attesting witnesses of the documents is Jodh Raj. The said agreement is in torn condition. It has been found that since the plaintiff has not disclosed such agreement, but keeping in view the previous transaction of the sale of wheat by the defendant, the Court found that the agreement was in fact executed by the defendant as collateral security for the loan of Rs.66000/- to the plaintiff. Such finding has been affirmed in first appeal.

Learned counsel for the appellant has vehemently argued that the issues were not properly framed as none of the issues framed is whether the agreement was executed? Still further, there is no evidence as to how

the sum of Rs.66000/- has been arrived at in respect of which the decree for recovery of money has been passed against the defendant.

I do not find any merit in the argument raised by learned counsel for the appellant. The issues were framed by the learned trial Court on 25.10.2001. The issues are framed keeping in view the pleadings of the parties. As the defendant has alleged that the agreement was a result of fraud and misrepresentation, the onus was rightly placed on the defendant to prove the said fact. Even otherwise, the parties have led evidence in respect of execution of the agreement. Therefore, the defendant cannot be permitted to raise an argument regarding framing of the issues in the second appeal for the first time. When the defendant appeared in the witness box as DW-1, he has admitted his signatures on the aforesaid agreement. The said agreement is also proved on the basis of the testimony of Jodh Raj who has appeared as PW-1. Therefore, once the execution of the document is proved, the recital in the agreement in respect of the payment of earnest money will also stand proved. The Courts below held that the agreement was not executed for sale of the property, but it was, in fact, executed as collateral security. Such finding has been returned on the basis of proper appreciation of evidence.

I do not find any illegality or irregularity in the findings recorded by the Courts below which may give rise to any substantial question of law for consideration of this Court in second appeal. Consequently, the present appeal is dismissed.

23-08-2007 **(HEMANT GUPTA)**
mohinder* **JUDGE